

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
AllCom)
Apparent Liability for Forfeiture)
File No. EB-09-IH-0116
NAL/Acct. No. 201032080032
FRN No. 0020037487

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 15, 2010

Released: July 16, 2010

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that AllCom apparently violated section 4(i), 4(j), 218 and 403 of the Act¹ by failing to respond to a directive of the Enforcement Bureau ("Bureau") to provide certain information and documents. Based on our review of the facts and circumstances surrounding this matter, we find that AllCom is apparently liable for a total forfeiture of \$20,000. We also order AllCom to respond fully to the Enforcement Bureau's Letter of Inquiry within ten days of release of this NAL.²

II. BACKGROUND

2. The Commission's rules require entities that provide interstate telecommunications services to pay annual regulatory fees; to contribute to the Universal Service Fund ("USF") and Telecommunications Relay Service ("TRS") Fund; to contribute to cost-recovery mechanisms for North American Numbering Plan ("NANP") administration and Local Number Portability ("LNP") administration; to file information as set forth on the Telecommunications Reporting Worksheet (i.e., FCC Forms 499-A and 499-Q); to file registration information; to confirm the registration of all carrier-customers (i.e., resellers); and to receive authorization from the Commission prior to commencing international telecommunications service.³

3. The Bureau received allegations in 2009 that Allcom may be operating in violation of the Commission's Universal Service Fund filing, contribution and other related rules and that Allcom may be providing international telecommunications service without Commission authorization. On its website,

¹ 47 U.S.C. §§ 154(i), 154(j), 218, 403.

² Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Thomas Skala, Chief Executive Officer, AllCom (July 27, 2008) ("LOI").

³ See 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 63.12(d), 63.18, 64.604, and 64.1195.

Allcom claims to provide telephone service, voicemail, conference calling, paging, and International Public Access Numbers through its Universal Office and Genie products.⁴ On July 28, 2009, the Bureau initiated an investigation into AllCom's alleged violations of sections 1.1157, 52.17, 52.32, 54.706, 54.711, 63.12(d), 63.18, 64.604, and 64.1195 of the Commission's rules, and Section 214 of the Communications Act of 1934, as amended ("the Act") by issuing the *LOI* directing AllCom, among other things, to provide information regarding these obligations and directing Allcom to respond by August 27, 2009.⁵ The Bureau directed the *LOI* to Thomas Skala, the Chief Executive Officer for AllCom, based on information on the Allcom webpage and sent the *LOI* via certified mail with a return receipt requested to Allcom's headquarters. The return receipt was received at Allcom and signed on July 31, 2009. AllCom failed to respond to the *LOI*.

4. Shortly after the due date, Bureau staff telephoned Mr. Skala and spoke with him. During that conversation, staff informed Mr. Skala that the Bureau was investigating Allcom's compliance with various Commission requirements, that it had sent the *LOI* to his attention and that the response was past due. Mr. Skala contended that AllCom was not within the Commission's jurisdiction but nonetheless committed to submitting a response the following week. After the conversation, staff sent a second copy of the *LOI* to Mr. Skala via e-mail at an e-mail address he provided, again directing him to respond. To date, the Bureau has not received a response from AllCom.

III. DISCUSSION

5. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁶ In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁷ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.⁸

⁴ See www.allcom.com/telephone.php. AllCom's web site also indicates that it provides credit card services with its GenieCard Visa® Prepaid Card and internet services. See www.allcom.com/money.php and www.allcom.com/internet.php.

⁵ See *LOI* at 1.

⁶ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act indicates that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991) ("*Southern California Broadcasting*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁸ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) ("*SBC Forfeiture Order*").

6. We conclude that AllCom apparently violated Commission orders by failing to respond to the *LOI*. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,”⁹ and section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”¹⁰ Section 218 of the Act authorizes the Commission to “obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”¹¹ Section 403 likewise grants the Commission “full authority and power to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act.”¹²

7. In the *LOI*, the Bureau directed AllCom to provide certain documents and information to enable the Bureau to perform its enforcement function and evaluate possible violations of sections 1.1157, 52.17, 52.32, 54.706, 54.711, 63.12(d), 63.18, 64.604, and 64.1195 of the Commission’s rules, and Section 214 of the Act. The *LOI* was sent via certified mail, with a return receipt requested, on July 28, 2009. The *LOI* specifically warned AllCom that failure to respond to the *LOI* could constitute a violation of the Act or the Commission’s rules.¹³ Nevertheless, AllCom failed to respond by the due date or request an extension of time in which to meet its obligations under the *LOI*. The Bureau staff then contacted Mr. Skala, who committed to respond to the *LOI*, after which staff sent another copy of the *LOI* directly to Mr. Skala. Allcom has not provided any response. Therefore, we conclude that AllCom’s failures to respond to the Bureau’s inquiries constitute apparent violations of a Commission order.¹⁴

8. Section 503(b)(1) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁵ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation or each day of a continuing

⁹ 47 U.S.C. § 154(i).

¹⁰ 47 U.S.C. § 154(j).

¹¹ 47 U.S.C. § 218.

¹² 47 U.S.C. § 403.

¹³ See *LOI* at 8.

¹⁴ See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7599-7600, ¶¶ 23-28 (2002) (\$100,000 forfeiture for egregious and intentional misconduct, *i.e.*, refusing to attest to truthfulness and accuracy of responses to *LOI*); *Globcom, Inc., Notice of Apparent Liability for Forfeiture and Order*, 18 FCC Rcd 19893, 19898 n. 36 (2003) (“*Globcom NAL*”) (subsequent history omitted) (delayed response to an *LOI* considered dilatory behavior that may result in future sanctions); *BigZoo.Com Corporation, Order of Forfeiture*, 20 FCC Rcd 3954 (Enf. Bur. 2005) (\$20,000 forfeiture for failure of an entity to provide any response to a USF *LOI*); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas, Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd 14072 (Enf. Bur. 2004) (\$3,000 forfeiture for a partial response to an *LOI*); *World Communications Satellite Systems, Inc., Notice of Apparent Liability for Forfeiture*, 18 FCC Rcd 18545 (Enf. Bur. 2003) (\$10,000 forfeiture for a non-responsive reply to an *LOI*); *Donald W. Kaminski, Jr., Notice of Apparent Liability for Forfeiture*, 16 FCC Rcd 10707 (Enf. Bur. 2001) (\$4,000 forfeiture after individual refused to respond to an *LOI*).

¹⁵ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.¹⁶ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require,”¹⁷ and our forfeiture guidelines.¹⁸

9. The forfeiture guidelines establish a base forfeiture amount of \$4,000 for failure to respond to a Commission communication.¹⁹ As discussed above, AllCom failed to respond to our *LOI* despite several attempts to elicit a response. We find that AllCom’s failure to respond to the *LOI* is a violation of the Commission’s rules. Misconduct of this type exhibits a disregard for the Commission’s authority that cannot be tolerated and, more importantly, threatens to compromise the Commission’s ability to adequately investigate violations of its rules.²⁰ In this case, the misconduct inhibits our ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission, *i.e.*, the reporting and contribution requirements for the Commission’s regulatory programs. Prompt, sworn responses to Bureau inquiry letters are critical to the Commission’s enforcement function.

10. Consistent with Commission precedent for violations of this nature, we find Allcom’s failure on multiple occasions to cooperate with the Bureau’s investigation and respond to the *LOI* warrants a sizable proposed forfeiture. In the past, we have proposed forfeiture as high as \$15,000 for a company that submitted a substantially late response that lacked the required supporting affidavit or declaration,²¹ and forfeitures of \$20,000 for companies that have failed to respond entirely.²² In this case, AllCom never responded to the *LOI* despite receiving two copies and after its CEO spoke to Bureau staff and represented that the company would respond. Taking into account the factors enumerated in section 503(b)(2)(D) of the Act, we conclude that a \$20,000 proposed forfeiture is justified in light of AllCom’s apparent failure to provide a response to the *LOI*.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, that AllCom is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$20,000 for willfully and repeatedly violating the Act and the Commission’s rules.

¹⁶ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *see also Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008). The Commission most recently adjusted the maximum statutory forfeiture amounts for inflation effective September 2, 2008. *See* 73 FR 44663-5. Apparent violations which occurred before that date were subject to lower statutory maxima.

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ 47 C.F.R. § 1.80(b)(4), Note, Guidelines for Assessing Forfeitures.

¹⁹ *Id.*

²⁰ *See e.g. Global NAPs California, Inc.*, DA 09-2375, ¶ 29 (rel. Nov. 12, 2009) (*Global Naps Forfeiture Order*).

²¹ *Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680, 13687-13688, ¶ 21 (2007).

²² *See, e.g., BigZoo.com Corp.*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enf. Bur. 2005).

12. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,²³ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER, AllCom SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. Nos. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Allcom will also send electronic notification within forty-eight (48) hours of the date said payment is made to Pam.Slipakoff@fcc.gov and Hillary.DeNigro@fcc.gov .

14. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. Global NAPs California, Inc. also will e-mail an electronic copy of its response to Pam.Slipakoff@fcc.gov and Hillary.DeNigro@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER shall be sent by certified mail, return receipt requested, to Thomas Skala, Chief Executive Officer, AllCom, 4570 South Eastern Avenue, Suite 23-221, Las Vegas, NV 89119.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

²³ See 47 C.F.R. § 1.1914.